

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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J.D. SALINGER, individually and as TRUSTEE :  
OF THE J.D. SALINGER LITERARY TRUST, : 09 Civ. 05095 (DAB)  
Plaintiffs, :  
-against- :  
JOHN DOE, writing under the name JOHN :  
DAVID CALIFORNIA; WINDUPBIRD :  
PUBLISHING LTD; NICOTEXT A.B.; and :  
ABP, INC. d/b/a SCB DISTRIBUTORS, INC., :  
Defendants. :  
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**DECLARATION OF CAMERON A. MYLER**

I, Cameron A. Myler, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am associated with Frankfurt Kurnit Klein & Selz, P.C., the attorneys for defendants John Doe, writing under the name John David California (whose actual name is Fredrik Colting); Windupbird Publishing Ltd., Nicotext A.B., and ABP, Inc. d/b/a SCB Distributors, Inc., (“Defendants”) in the above-captioned action. I submit this declaration in support of Defendants’ opposition to Plaintiff’s motion for a preliminary injunction.

2. I have read *The Catcher in the Rye* (“Catcher”), written by J.D. Salinger, as well as *60 Years Later: Coming Through the Rye* (“60 Years”), written by J.D. California.

3. In an effort to portray *60 Years* as a “rip off” that has simply copied the character Holden Caulfield and other elements of *Catcher*, Plaintiff has compiled two charts that list Defendants’ purported misappropriations. See Affidavit of Marcia B.

Paul, sworn to June 1, 2009 (“Paul Aff.”), Exhibit C (“Similarities Between ‘Holden Caulfield’ in *The Catcher in the Rye* and ‘Mr. C’ in *60 Years Later: Coming Through the Rye*” (the “Holden Chart”) and “Similarities Between *The Catcher in the Rye* and *60 Years Later: Coming Through the Rye*” (the “Catcher Chart”) (collectively, the “Charts”).

4. I have reviewed these Charts as well as the specific references to both *60 Years* and *Catcher* contained therein.

5. The Charts, as well as Plaintiff’s Complaint (“Compl.”) and Memorandum in Support of Application for Preliminary Injunction (“Brief” or “Pl. Br.”), are fraught with inaccuracies and mischaracterizations regarding the alleged “similarities” between *60 Years* and *Catcher*. Plaintiff’s papers also identified numerous “similarities” of elements in *Catcher* that are far too generalized to be protected by copyright.

### **Inaccuracies**

6. A careful review of the Charts, as well as Plaintiff’s Complaint and Brief, shows that a number of the similarities claimed by Plaintiff are factually inaccurate, including, but not limited to the following:

- a) “As in *Catcher*, Mr. C. goes ice skating.” Compl., ¶ 62; *see also* Pl. Br., p. 11; Catcher Chart, p. 19. Mr. C. does not go ice skating in *60 Years*. The *only* reference to skating in *60 Years* is this: “[a]s we sit down on a bench, *Phoebe immediately starts talking about ice skating* and how much fun it would be and perhaps some of her friends are at the rink, and so on.” *60 Years*, p. 264 (emphasis added).
- b) “As in *Catcher*, Mr. C’s first stop in New York City is a phone booth.” Compl., ¶ 62; *see also* Pl. Br., p. 11; Catcher Chart, p. 13. Mr. C’s “first stop in New York City” actually occurs more than twenty pages before the

reference cited by Plaintiff (*60 Years*, p. 86), and is a café, not a phone booth. See *id.* at 63.

- c) “In the final scene of both books, Phoebe rides the carousel in Central Park.” Pl. Br., p. 11; *see also* Holden Chart, p. 12; Catcher Chart, pp. 7, 16. This is not correct. There are several critical scenes in *60 Years* after Mr. C and Phoebe ride on the carousel in Central Park – Salinger tries to make a final decision about how to deal with his most beloved character (*60 Years*, p. 268), Mr. C runs through a field of rye and into empty space (*Id.* at 273) and, finally, an extended passage describes Mr. C with Phoebe at an assisted living residence “in the mountains” (*Id.* at 275).
- d) “Holden goes to Museum of Natural History.” Catcher Chart, pp. 6, 13; Compl., ¶ 62; Pl. Br., p. 11. Holden does not go to the Museum of Natural History in *Catcher* (“Then a funny thing happened. When I got to the museum, all of a sudden I wouldn’t have gone inside for a million bucks.” *Catcher*, p. 122). What Mr. C actually does on the page referred to by Plaintiff is “get off at the Museum of Natural History and walk north, deep into the heart of the park” where he attempts suicide by a drug overdoes. *60 Years*, p. 190. Mr. C does visit the museum later in *60 Years*. *Id.* at 195.
- e) “Phoebe plans to leave with Holden at end.” Catcher Chart, pp. 2, 10; Holden Chart, p. 14. In *Catcher*, Phoebe tried to convince Holden to take her to California with him (“I’m going with you. Can I? Okay?” “Why can’t I? Please, Holden! I won’t do anything – I’ll just go with you, that’s all!” (p. 206)). In *60 Years*, it is only at Holden’s request that Phoebe leaves her retirement/nursing home in Philadelphia (“Phoebe I say, get your jacket. We’re leaving.” “Somehow it feels more like breaking out of cold war Russia than a retirement home.” (p. 253)).

## Mischaracterizations

7. A number of the entries in the Holden Chart and the Catcher Chart (and references thereto in Plaintiff's Complaint and Brief) mischaracterize and/or exaggerate the alleged appropriations by *60 Years*, including, but not limited to the following:

- a) "Holden is physically threatened twice in the same day." Catcher Chart, p. 19. Plaintiff states that in *Catcher*, Holden was beaten up by Stradlater (p. 43) and Maurice (pp. 101, 103). The allegedly "similar" passage in *60 Years* makes a reference to Mr. C having "almost been killed twice in the same day." (p. 107). However, in *60 Years*, Mr. C isn't beaten up by either Stradlater or Maurice; it is the Salinger character writing the book ("Mr. Salinger") who, while writing Mr. C's story, tries to kill him off by various means: a runaway truck (pp. 66, 70); falling construction debris (p. 85); a lunatic woman with a knife (p. 104); suicide by drowning (p. 126-27); suicide by pills (p. 191); and by Mr. Salinger himself with a heavy cast-iron dog statue (p. 228-29).
- b) The Catcher Chart includes a section called "Other Names Common to Both Works," which simply lists matching words in the two works, though there are no similarities between the names listed. See Catcher Chart, p. 5. For example:
  - o **Harry.** The Harry in *Catcher* is one of Holden's classmates at Pencey – Harry Fencer. *Catcher*, p. 57. In *60 Years*, "old man Harry" is another resident at the nursing home where Mr. C. lives. *60 Years*, p. 37-39.
  - o **Sunny.** In *Catcher*, Sunny is the name of the prostitute Holden encounters. *Catcher*, pp. 95, 98. No character named Sunny appears in *60 Years*; the only tangential reference to that name is that Mr. C's nursing home is called "Sunnyside." *60 Years*, pp. 39, 55.
  - o **Jim.** In *Catcher*, Holden tells Sunny (the prostitute) that his name is "Jim Steele." *Catcher*, p. 94. In *60 Years*, there is a "Jimmy the gardener," who "is from Mexico." *60 Years*, pp. 39, 40.

- **George.** In *Catcher*, “George something” was a friend of Sally Hayes. *Catcher*, p. 127. In *60 Years*, George is a homeless man sitting on the sidewalk near Astor Place, from whom Mr. C buys a painting. *60 Years*, pp. 164-70.
  - **Mary.** In *Catcher*, the reference to “Mary” pointed out by Plaintiff is to the school that Sally Hayes attended – Mary A. Woodruff. *Catcher*, p. 105. The Mary in *60 Years* is the deceased wife of Mr. C. *60 Years*, p. 42, 43.
  - **Rudolf/ Rudolph.** In *Catcher*, Holden tells a woman on a train that his name is “Rudolf Schmidt” and notes that “Rudolf Schmidt was the name of the janitor in our dorm.” *Catcher*, pp. 54-55. In *60 Years*, there is a single reference to Rudolph, a Labrador retriever that Mr. C once owned “for 4 years before he got hit by a car.” *60 Years*, p. 50.
- c) “Holden prepares to have sex with a woman and then chickens out.” *Catcher* Chart, p. 14; *see also* Holden Chart, p. 2; Compl., ¶ 62; Pl. Br., p. 11. In *Catcher*, the woman is a prostitute named Sunny (*Catcher*, pp. 93-98); in *60 Years*; Mr. C turns down the advances of a woman named Charlie, a former student of his, whom he has known for many years (*60 Years*, pp. 134-184).
- d) “Woman Holden was going to have sex with leaves and then comes back with man.” *Catcher* Chart, p. 15. In *Catcher*, Sunny returns to Holden’s hotel room with her pimp Maurice to collect the five dollars she says she is owed and Maurice proceeds to hit Holden. (p. 100-101). The scene in *60 Years* is entirely different: after Mr. C rejects Charlie’s sexual advances, she returns with a boy who asks Mr. C “[s]o gramps, you like to watch little girls?” before having sex with Charlie in front of Mr. C. (p. 181). Mr. Salinger then makes the boy disappear. (p. 183).

## Same General Idea/Different Expression

8. There are numerous references to general ideas that Plaintiff seems to claim were infringed. However, there are no “similarities” between the expression of those ideas in *Catcher* and *60 Years*, in fact, the expression is remarkably different. By way of example only:

- a) “Holden leaves home suddenly.” Catcher Chart, p. 6, 13; Holden Chart, p. 10. In *Catcher*, after Holden has been expelled from Pencey, he is contemplating visiting “old Mal Brossard” when “all of a sudden, [he] changed [his] mind” and decided to leave school (not home) and stay in a hotel in New York until the next Wednesday when the school term ended and he could go home to his parents’ house. (p. 51). The scene in *60 Years* is completely different: Mr. C leaves Sunnyside, the retirement home where he lives, after Mr. Salinger “puts his fingers on the keys” and types Mr. C’s story, which compels him to leave. (pp. 56-7).
- b) “Holden leaves institution for New York City.” Catcher Chart, p. 8; “Plot revolves around leaving institution for New York City.” *Id.* at 13. Plaintiff cites no text in *Catcher* that was allegedly appropriated, only that the idea in *60 Years* that Mr. C “leaves retirement home for New York” is similar to the idea that Holden “leaves Pencey School for New York.” See Catcher Chart, pp. 8, 13. Pencey is not an institution, nor is Sunnyside, the residence where Mr. C lives.
- c) “Holden arrives in New York.” Catcher Chart, p. 8, 13. Plaintiff claims that the following passages are similar: in *Catcher*, “the first thing I did when I got off at Penn Station, I went into this phone booth” (p. 59), while in *60 Years*, “[t]he bus arrived a couple of hours ago so now I’m in this café, watching the rain ride high on the waves of the wind and roll through the streets of New York” (p. 63). Other than the fact that both scenes occur in New York City, there is no similarity between the two.

- d) “Narrative ends with Holden in institution.” Catcher Chart, p. 9, 22; Holden Chart, p. 12. In *Catcher*, Holden is in an “institution” where he tells us that “this one psychoanalyst guy they have here, keeps asking me if I’m going to apply myself when I go back to school next September.” (p. 213). In *60 Years*, Mr. C has moved to an assisted living residence “in the mountains” with his sister Phoebe and is waiting for his son Daniel to arrive from California. (pp. 275-76).
- e) “Holden fears that man accompanying potential female sex partner will punch him.” Holden Chart, p. 2; Catcher Chart, p. 15. In *Catcher*, Maurice (Sunny’s pimp) first “snapped his finger very hard” on Holden’s pajamas (he “won’t tell you *where* [Maurice] snapped it”), after which Holden was “so damn mad and nervous and all.” (p. 103). Only then did Maurice “smack” Holden, who “didn’t even try to get out of the way or duck or anything.” (p. 103). In *60 Years*, Mr. C tells us that the “boy gets up and comes over to me while Charlie goes and stands by the window and for a moment I have this crazy thought that he’s going to take a swing at me. But all he does is extend his hand.” (p. 181).
- f) “Repeated references to grippé/flu.” Catcher Chart, p. 16; Holden Chart, p. 10. All of the references to “the grippé” in *Catcher* involve characters other than Holden: Holden’s teacher Mr. Spencer (pp. 3, 6, 8, 15) and Phoebe’s friend Alice Holmborg (p. 177). In *60 Years*, the allegedly “repeated references” to the flu occur in one scene: when Mr. Salinger first reanimates his character, Mr. C thinks he’s “getting the flu or something” and heard that “some people on the second floor [at Sunnyside] had gotten the flu.” (pp. 14-15).
- g) “Holden encounters three young women.” Catcher Chart, p. 18. In *Catcher*, Holden encounters three young women in “this night club, the Lavender Room” who are named “Marty and Laverne” and “Bernice something – Crabs or Krebs.” Holden dances with all of them and tries to have a conversation with them before they end up sticking him with the check. (pp. 73-75). In *60 Years*, after Mr. C is nearly killed by a crazy woman in Central Park with a

knife, he is standing on the sidewalk by the park and sees “three [women], all dressed up,” who cram in a taxi and speed away. (p. 106).

- h) “Narrator is very sarcastic/cynical.” Catcher Chart, p. 24; Holden Chart, p. 2.

In *Catcher*, Holden talks about “what a gorgeous job” it is for a 65-year old man to be carrying people’s suitcases. (p. 61). In *60 Years*, Mr. C says that he “sure did pick one hell of a day to come to the cemetery.” (p. 111).

- i) “Narrator uses euphemisms for urination repeatedly: ‘take a leak’ and ‘relieve.’” Catcher Chart, p. 29; Holden Chart, p. 24. In *Catcher*, Holden refers to a “perverty bum” taking a leak (p. 201) and someone’s Doberman pinscher “relieving himself” on Holden’s lawn (pp. 76, 77), but never uses those terms in connection with himself. In *60 Years*, the references are included as part of the overall presentation of an aged Mr. C, who suffers from a bladder problem and constantly needs to “relieve himself” or “take a leak.” (pp. 105, 138, 176, 197, 241).

- j) “Narrator complains about a lot of things.” Catcher Chart, p. 32; Holden Chart, p. 2. In *Catcher*, Holden’s comment of “God I hate that stuff” refers to “Commander Blop or something” being “one of those guys that think they’re being a pansy if they don’t break around forty of your fingers when they shake hands with you.” (pp. 86-87). Holden also “hate[s] it when somebody has cheap suitcases.” (p. 108). The passages in *60 Years* cited by Plaintiff are the following: “[t]he same old elevator music is playing in the corridor. Usually it drives me nuts, but now somehow it doesn’t bother me anymore” (p. 57) and “[y]ou’d think God would have come up with another color for gray. I mean what good does it do anyone?” (p. 111).

9. In reading *Catcher*, I counted around 80 characters that do not appear in *60 Years*. See list of characters in *Catcher* attached hereto as Exhibit A.

Dated: New York, New York  
June 15, 2009

Cameron A. Myler  
CAMERON A. MYLER